

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	21-1308
Introduction Date	6/30/2021
Enactment Number	21-1204
Enactment Date	6/30/2021 os



# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Lisa Grant-Dawson, Chief Business Officer  
Rebecca Littlejohn, Risk Management Officer

**Meeting Date** June 30, 2021

**Subject** Sutter Health Plus (SHP) – Annual Contract Renewal

**Ask of the Board** Approval by the Board of Education for the renewal of the annual contract with Sutter Health Plus (SHP), one of the Districts Medical plan providers.

**Background** Since July 1, 2017, the District has contracted with Sutter Health Plus (SHP) as one of two options for medical health benefits for eligible OUSD employees. The District also offers health benefits through Kaiser.

**Discussion** Annually, the District negotiates plan and rate changes through our Health Benefits Broker, Segal Advisors. For the 2021-22 fiscal year, SHP made amendments to all of their contracts to align their business operations to comply with regulatory standard changes, which resulted in updates to our contract language for clarity in the plan and associated services and assurances. It is not anticipated that these changes will affect the District.

A summary of plan changes in our modified agreement is as follows:

- There rate for health benefits will remain unchanged from 2020-21 to 2021-22
- Added a static signature for Sutter Health Plus (does not affect plan participants)
- The reference to the form previously labeled as XXX to *Employer Enrollment/Change Form* was amended throughout the contract.
- Removed the signature blocks from the cover page of the Agreement for ease of administration. Signature blocks now only appear at the end of the Agreement.

**Fiscal Impact** There is a 0.0% rate change for SHP from 2020-2021 fiscal year to the 2021-2022 fiscal year; the fiscal impact will not be known until after open enrollment if employees shift their participation to or from Sutter Health Plus.

**Attachment(s)**

- Employer Group Contract Revision
- E-21-004\_LG\_Subscriber\_Contract OUSD

# Group Subscriber Contract

## Large Group Plan

Group Name	Total Eligible Employees in Group	Coverage Effective Date	
Group Physical Address (P.O. Boxes Not Accepted)	City	State	ZIP
Associated Employers/Included Employers			

This Large Group Subscriber Contract ("Agreement") is entered into by and between Sutter Health Plan, a California non-profit public benefit corporation doing business as Sutter Health Plus, ("SHP") and the Group identified above ("Group") upon the following terms and conditions:

### RECITALS

- A. Whereas, SHP is a health care service plan that arranges for the provision of health care services to persons enrolled as Members through contracts with licensed physicians, hospitals and other health care providers.
- B. Whereas Group is an employer, union, trust, organization, or association which desires to make health care services available to its Eligible Employees and their Dependents.
- C. Whereas, SHP desires to contract with Group to arrange for the provision of such health care services to Subscribers and Dependents of Group, and Group desires to contract with SHP to arrange for the provision of such services to its Subscribers and Dependents.

Now therefore, the parties agree as follows.

### Article 1

#### DEFINITIONS

The terms used in this Agreement have the meanings set forth in this Article 1, and the meanings set forth in the Combined Evidence of Coverage and Disclosure incorporated by this reference and made a part of this Agreement.

- 1.1 Agreement. The Agreement includes this Large Group Subscriber Contract, the Employer Health Care Coverage Application, all attachments and any amendments thereto.
- 1.2 Associated Employers. Associated Employers are employers that are the Group's subsidiaries or affiliates listed as "Included Employers."
- 1.3 Child. An adopted, step, or recognized natural child or any child of the Subscriber for whom the Subscriber has assumed a parent-child relationship as indicated by the intentional assumption of parental status or parental duties, as certified by the Subscriber at the time of enrollment and up until the age of 26 unless the child is disabled. A disabled child is one whom at the time of attaining the age of 26 is incapable of self-support because of a physical or mental disability which existed continuously from a date prior to the attainment of age 26 until termination of such incapacity.
- 1.4 Coinsurance. Coinsurance is a percentage of charges the Member must pay when the Member receives Covered Services.

- 1.5 Combined Evidence of Coverage and Disclosure Form. The Combined Evidence of Coverage and Disclosure Form is the document issued to prospective and enrolled Members disclosing and setting forth the benefits and terms and conditions of coverage to which Members of the Health Plan are entitled. Copies of the Combined Evidence of Coverage and Disclosure Form are available on the SHP public website through the Forms and Resources page and upon request to SHP Member Services.
- If Group selects optional benefits, the optional benefit documents will be available on the SHP Employer and Member Portals. If Group selects optional dental, acupuncture or chiropractic benefits, a separate contract must be signed.
- 1.6 Covered Services. Medically Necessary health care services and supplies that a Member is entitled to receive through the Health Plan. Covered Services are included in the Combined Evidence of Coverage and Disclosure Form and are subject to exclusions and limitations as set forth in the Combined Evidence of Coverage and Disclosure Form.
- 1.7 Copayment. A specific dollar amount that the Member must pay when the Member receives Covered Services.
- 1.8 Dependent. Any Spouse, Domestic Partner or Child of a Subscriber who lives, works or resides in the SHP service area and who is eligible for enrollment as a dependent in the Health Plan. This includes the Spouse or Domestic Partner, or child, of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition.
- 1.9 Domestic Partner. The Subscriber's registered domestic partner who meets the requirements of California Family Code sections 297 or 299.2, or a domestic partner who meets group's eligibility requirements for domestic partner as long as the group's eligibility requirements are not more restrictive than California Family Code sections 297 or 299.2.
- 1.10 Eligible Employee. Eligible Employee is a Group employee (as defined under state and federal law) who meets any applicable waiting period and additional criteria specified by the Group for eligibility in the Health Plan.
- 1.11 Enrollment. Enrollment is the execution of an SHP Employee Enrollment/Change Form or a non-standard enrollment form approved by SHP, by the Group, and by the Subscriber on behalf of the Subscriber and his or her Dependents, and acceptance thereof by SHP. Enrollment is conditioned upon the execution of this Agreement by SHP, and either the execution of this Agreement by Group or the timely payment of applicable Health Plan Premiums by Group. SHP may, in its sole discretion and subject to specific protocols, accept Enrollment through an electronic submission from Group. If Group uses a Trading Partner for electronic data submission, Group must also complete Attachment 2, Authorization for Trading Partner Data Transmission.
- 1.12 Group. Group is the single employer labor union, trust, organization, or association identified in this Agreement. If a Group has delegated any of its duties under this Agreement or the laws and regulations pertaining to this Agreement, the term "Group" shall include the Group's designee.
- 1.13 Group Contribution. Group Contribution is the amount of the Health Plan Premiums applicable to each Subscriber which is paid solely by the Group or Included Employer(s) and which is not paid by the Subscriber either through payroll deduction or otherwise.
- 1.14 Health Plan. Health Plan is the SHP health care benefit plan described in this Agreement, subject to modification pursuant to the terms of this Agreement.
- 1.15 Health Plan Premiums. Health Plan Premiums are amounts set forth on the Rate Sheet, attached hereto as Attachment 1, to be paid to SHP on behalf of Members in consideration of the benefits provided under this Health Plan. Health Plan Premiums are amended from time-to-time in accordance with the terms of this Agreement.
- 1.16 Included Employers. Included Employers under this Agreement are the Group and its Associated Employers, if any. An Eligible Employee of more than one Included Employer will be considered an Eligible Employee of only one of those employers for the purpose of the Group Health Care Coverage. On any date when an employer ceases to be an Included Employer, this Agreement will be considered to end for Employees of that employer. This applies to all of those Employees except those who, on the next day, are still within the covered classes of this Agreement as Employees of another Included Employer. Group must notify SHP, in writing, when an employer listed as an Associated Employer is no longer one of its subsidiaries or affiliates.
- 1.17 Member. A Subscriber or qualified Dependent who is entitled to receive Covered Services.
- 1.18 Open Enrollment Period. Open Enrollment Period is a once a year period when employees may enroll themselves and their Dependents in this Health Plan. Unless otherwise mutually agreed upon by SHP and Group, the Open Enrollment Period is the 30 day period immediately preceding the renewal date of this Agreement.
- 1.19 Rate Sheet. Rate Sheet is Attachment 1 to this Agreement and sets forth the Health Plan Premiums to be paid by Group to SHP in consideration of coverage under the Health Plan. By this reference, the Rate Sheet is incorporated in this Agreement

as though set forth fully herein.

- 1.20 Special Enrollment Period. Special Enrollment Period is a time period outside of the Open Enrollment Period when employees can enroll themselves and their Dependents for the Health Plan after a qualifying event has occurred. Qualifying events are established by state and federal law and are summarized in the Combined Evidence of Coverage and Disclosure Form.
- 1.21 Spouse. Spouse is the Subscriber's legal husband or wife or the Subscriber's Domestic Partner.
- 1.22 Subscriber. Subscriber is the Group employee enrolled in the Health Plan for whom the appropriate Health Plan Premiums have been received by SHP, and whose employment or other status, except for family dependency, is the basis for enrollment eligibility.
- 1.23 Trading Partner(s). Any business partner (provider, billing service, software vendor, employer group, financial institution, etc.) who transmits or receives electronic data from Health Plan. All Trading Partners must be listed on Attachment 2 to this Agreement.

## **Article 2**

### **ELIGIBILITY AND ENROLLMENT OF SUBSCRIBERS AND DEPENDENTS**

Individuals are eligible for enrollment in the Health Plan only upon meeting and continuing to meet the requirements set forth in this Article 2.

- 2.1 Enrollment Procedure.
  - 2.1.1 Employee Enrollment/Change Form. Group must submit a properly completed and executed Employee Enrollment/Change Form, or a non-standard enrollment form approved by SHP, for each employee and any Dependents to be enrolled in the Health Plan.
  - 2.1.2 Employee Eligibility. Eligible Employees must live, work or reside in SHP's Service Area to enroll in the Health Plan. Group may maintain and inform its employees of any additional eligibility requirements specific to Group.  
Consultants, temporary labor, suppliers or contractors are not Eligible Employees.
  - 2.1.3 Time of Enrollment. All applications for enrollment shall be submitted within the first sixty (60) days of an Eligible Employee's initial period of eligibility or during an Open Enrollment Period or Special Enrollment Period. Applications submitted outside of these timeframes may be rejected by SHP. Group shall provide notice to Eligible Employees of the applicable enrollment periods.
  - 2.1.4 Declination of Coverage (Waiver). Each Eligible Employee is required to enroll under an Employer-sponsored health plan unless employer has obtained a valid waiver for the Eligible Employee as described in the SHP Underwriting Guidelines. Group shall provide a written notice and acknowledgement to Eligible Employees of the availability of coverage under the Health Plan and indicate that failure to elect coverage within the time allowed permits SHP to exclude coverage for the Eligible Employee for a period up to twelve (12) months until the Group's next Open Enrollment Period. Eligible Employees who decline coverage with SHP due to other coverage and later lose their coverage, may be eligible for coverage with Group through a Special Enrollment Period.
  - 2.1.5 834 Electronic Data Interchange (EDI) Membership Enrollment. Notwithstanding section 2.1.1, SHP may, in its discretion and subject to specific protocols, accept Enrollment through an electronic submission from Group. Group may send enrollment through an EDI vendor and/or Group. If Group elects to use a vendor for its EDI processes and procedures, Group must complete Attachment 2.
    - 2.1.5.1 All Health Plan EDI processes and procedures will be provided to Group in the Health Plan 834 Health Care Benefit Enrollment and Maintenance Companion Guide, which is incorporated into this Contract by reference. Group must comply with all processes and procedures included in the Health Plan 834 Health Care Benefit Enrollment and Maintenance Companion Guide.
- 2.2 Commencement of Coverage. Coverage under Health Plan shall be effective in accordance with the terms this Agreement. SHP's acceptance of each Enrollment is contingent upon receipt of the applicable Health Plan Premiums and acceptance of the Employee Enrollment/Change Form.

**Article 3**  
**GROUP OBLIGATIONS**

- 3.1 Non-Discrimination. Group shall offer SHP an opportunity to market the Health Plan to its employees and shall offer its Eligible Employees an opportunity to enroll in the Health Plan under no less favorable terms or conditions than Group offers enrollment in other health care service plans or employee health benefit plans.
- 3.2 Notices to SHP.
- 3.2.1 Notice of Termination. Group shall forward all notices of termination to SHP within sixty (60) days after Member loses eligibility or elects to terminate membership under this Agreement. Group agrees to pay any applicable Health Plan Premiums through the last day of the month in which notice of termination is received by SHP.
- 3.2.2 Notice of Declination of Coverage. Group shall provide a written statement to SHP, within five (5) days of the request that the written notice and acknowledgement set forth in Section 2.1.3 was provided to an Eligible Employee by Group and was executed by the Eligible Employee. Group shall attach to the written statement prepared by Group a copy of the written notice and acknowledgement executed by the Eligible Employee.
- Group's failure to provide the written notice and acknowledgement to an Eligible Employee and failure to obtain the Eligible Employee's signature on the form shall constitute a material breach of this Agreement. Group shall be responsible for all damages incurred by SHP as a result of a breach, including the full actual cost to SHP of providing Covered Services to the Eligible Employee and/or his or her Dependents for the period beginning the date the Eligible Employee and/or his or her Dependents obtained eligibility under the Health Plan and ending the date the Eligible Employee and/or his or her Dependents would have obtained eligibility were it not for Group's failure to provide the written notice and acknowledgement to the Eligible Employee. SHP and Group agree that this represents a fair and reasonable estimate of the costs that SHP will incur by reason of Group's failure to obtain the signature of an Eligible Employee on the written notice and acknowledgement.
- 3.3 Notices to Member.
- 3.3.1 Notice of Start of Grace Period. If Group does not pay Health Plan Premiums on time, SHP will provide Group with a grace period of no less than 30 calendar days after the date on the Notice of Start of Grace Period to remit past due Health Plan Premiums without losing coverage. SHP will send Group a Notice of Start of Grace Period that informs Group that Group's account is subject to cancellation due to nonpayment. Group will provide each Subscriber a true, legible copy of the Notice of Start of Grace Period, by sending to the Subscriber's then current mailing or email address. Upon SHP's request, Group shall promptly provide SHP with a copy of the Notice of Start of Grace Period delivered to each Subscriber, along with evidence of the date the notice was provided.
- 3.3.2 Notice of End of Coverage. If Group terminates this Agreement pursuant to Article 7 below, Group shall promptly notify all Members enrolled through Group of the termination of their coverage in the Health Plan. Group shall provide such notice by delivering to each Subscriber a true, legible copy of the Notice of End of Coverage sent from SHP to Group at the Subscriber's then current address. Upon SHP's request, Group shall promptly provide SHP with a copy of the Notice of End of Coverage delivered to each Subscriber, along with evidence of the date the notice was provided.
- 3.3.3 Notice of Change in Premiums or Benefits. If, pursuant to Sections 3.6.1 and 3.6.2 below, SHP modifies Health Plan Premiums, or if SHP modifies Copayments, Coinsurance or Deductibles, or modifies Covered Services provided under this Agreement, SHP will notify Group one hundred twenty (120) days prior to any change. Group shall promptly notify all Members enrolled through Group of the modification. In addition, Group shall promptly notify Members enrolled through Group of any other changes in the terms or conditions of this Agreement affecting the Members' benefits or obligations under the Health Plan. Group shall provide such notice by delivering to each Subscriber a true, legible copy of the notice of the increase in Health Plan Premiums, Copayments, or Deductibles, or reduction in Covered Services sent from SHP to Group at the Subscriber's then current address. Upon request by SHP, Group shall promptly provide SHP with a copy of the notice of Health Plan Premiums or Copayment modification in Covered Services delivered by Group to each Subscriber, along with evidence of the date the notice was provided.
- 3.3.4 SHP Non-Liability. SHP shall have no responsibility to Members in the event Group fails to provide the notices required by Section 3.3.
- 3.4 Indemnification. Group agrees to indemnify, defend and hold SHP and its respective employees, officers, directors, representatives, agents, successors and assigns harmless from any and all damages, claims, judgments, losses, costs and expenses, including attorneys' fees, and to accept all legal and financial responsibility for any liability arising out of a failure by

Group or Group's employees, officers, directors, or Trading Partners to perform Group's obligations as set forth in Article 3, or to comply with state and federal laws applicable to their performance of these obligations.

- 3.5 Payment of Premiums. Group shall pay premiums to SHP for the duration of this Agreement, in accordance with the premiums specified in the Rate Sheet attached hereto as Attachment 1. Except as provided below in Section 3.6, the rates shall remain in effect throughout the duration of this Agreement.
- 3.5.1 Due Date. Health Plan Premiums are due in full on a monthly basis by check or electronic transfer and must be paid directly to SHP on or before the last business day of the month prior to the month for which the Health Plan Premiums apply. Failure to provide payment on or before the due date may result in termination of Group, as set forth in Section 7.2.1 below.
- 3.5.2 Delinquent Payment. SHP reserves the right to assess an administrative fee in the amount of five percent (5%) of the monthly group premium for each delinquent premium payment. This fee will be assessed solely at SHP's discretion. In the event that payments not made in a timely manner are received by SHP after termination of Group, the deposit or application of such funds does not constitute acceptance, and such funds shall be refunded by SHP within thirty (30) business days of receipt if SHP, in its sole discretion, does not reinstate Group. Group understands that untimely payment of premium may result in SHP sending a Notice of End of Coverage to Members enrolled through Group.
- 3.6 Modification of Rates and Benefits.
- 3.6.1 Modification of Health Plan Premiums. If the State of California or any other taxing authority imposes upon SHP a tax or license fee which is levied upon or measured by the monthly amount of Health Plan Premiums or by SHP's gross receipts or any portions of either, then upon sixty (60) days written notice to Group, Group shall remit to SHP, with the appropriate payment, a pro rata amount sufficient to cover all such taxes and license fees, rounded to the nearest cent.
- 3.6.2 Modification of Benefits or Terms. The Covered Services set forth in the Combined Evidence of Coverage and Disclosure Form and any supplemental attachments to this Agreement, as well as other terms of this Agreement, may be modified by SHP in its sole discretion upon one hundred twenty (120) days written notice mailed to Group. Any such modification shall take effect commencing the first full month following the expiration of the one hundred twenty (120)-day notice period.
- 3.7 Additions and Terminations. SHP will only allow additions and terminations of Subscribers and Dependents on the first of the month, unless the addition is for coverage for a newborn child or the termination is for a member who is deceased. Processes for additions and terminations for newborn children or deceased members are as follows:
- a. Additions effective on or before the 15th day of the month of coverage will be billed for a full month's Health Plan Premiums; additions effective after the first 15 days of the month of coverage will result in no Health Plan Premiums billed for that month. Upon request, SHP will accept a newborns date of birth as the effective date.
  - b. Terminations effective on or before the 15th day of the month of coverage will result in no Health Plan Premiums billed for that month; terminations effective after the 15th day of the month of coverage will result in a full month's Health Plan Premiums being billed.
- Group must notify SHP in writing within thirty (30) days of the receipt of a completed Employee Enrollment/Change Form and within thirty (30) days of receipt of all termination and change forms. This requirement is in addition to the requirement in Section 3.2 to submit copies of enrollment forms and change forms.
- 3.8 Retroactive Adjustments. At the discretion of SHP, retroactive adjustments may be made for any additions and terminations of Members and changes in coverage class not reflected in Group records at the time the Health Plan Premiums were calculated. However, no retroactive credit will be given for any period which is more than two months prior to the date on which SHP received Notice of End of Coverage of the Member or change in coverage class. For example, if a request to terminate a member is received on the 15th of July, the effective date of the member's termination can go back two complete months to May 1st. The effective date of the adjustment can never exceed 90 days. By requesting a retroactive termination date, Group is confirming that there have been no premiums taken from the Member after the requested retroactive termination date.
- 3.9 Group Eligibility. During the term of this Agreement, Group will promptly notify SHP of any significant changes in the Group's composition, eligibility requirements, or employees' costs associated with coverage. Any such change that is deemed adverse by SHP (unless agreed to in writing by SHP prior to such change) shall give SHP the option, in its discretion, of adjusting rates or modifying benefit design or limiting enrollment, subject to the notice requirements of Section 3.6. Any loss of Group eligibility shall give SHP the option, in its discretion, of terminating this Agreement, subject to the notice requirements of Section 7.2. If termination of this Agreement is a result of Group's loss of eligibility, SHP may, in its sole discretion, offer Group replacement coverage under any other health benefits product as may be offered by SHP.

- 3.10 Minimum Enrollment. The Group must maintain a minimum enrollment if agreed upon by SHP. Any such agreement shall be in writing, and shall constitute a part of this Agreement. SHP may terminate this Agreement by giving the Group 31 days' prior written notice in the event enrollment falls below the minimum enrollment.
- 3.11 Health Care Plan Administrator. Group has established and as sponsor, maintains pursuant to other written documents, a health benefits program for the benefit of its eligible employees and their Dependents, which is an "employee welfare benefit plan" within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). SHP is not the "administrator," "plan sponsor" or a named or unnamed "fiduciary" for purposes of ERISA, provided that for purposes of determining whether to pay all or any portion of a claim, SHP shall have the exclusive, discretionary and final authority to make such determination, and such determination shall be binding unless it is shown that such determination was arbitrary and capricious.
- It is the responsibility of the Group to inform its Eligible Employees and their Dependents of their ERISA mandated rights and to comply with any ERISA mandated responsibilities, obligations and duties. In no event shall SHP have any responsibility to provide any person with any notice under the Internal Revenue Code of 1986, as amended, or ERISA, that is required to be provided by the Group or the plan administrator of any plan sponsored by the Group.
- 3.12 Notice of Individual Conversion Rights. Within fifteen (15) days after a Member's coverage terminates, Group shall notify the Subscriber on behalf of the Subscriber and his or her Dependents or, if no Subscriber is available, any terminated Dependent, of the availability, terms, and individual conversion rights as set forth in the Combined Evidence of Coverage and Disclosure Form, for Members with COBRA coverage, for Members with Cal-COBRA coverage, and for Members who have neither COBRA nor Cal-COBRA coverage but are entitled to individual conversion rights.

## **Article 4**

### **BENEFITS AND CONDITIONS FOR COVERAGE**

- 4.1 Benefits. The Combined Evidence of Coverage and Disclosure Form, the Rate Sheet and any Optional Benefit Riders and additional related attachments included at the end of this Agreement or on the SHP Employer Portal are integral parts of this Agreement. These documents include a complete description of the benefits and conditions of coverage of the Health Plan.
- 4.2 Material Provided to Employees. SHP shall provide individual identification cards to each Member, information on riders if selected by the Group, and information on how to search for providers.
- Group shall comply with Section 1363 of the California Health and Safety Code which requires Group contract holders to disseminate copies of the Combined Evidence of Coverage and Disclosure Form, which includes a Benefits and Coverage Matrix, to Eligible Employees and Subscribers. At least once per year, SHP will provide Group with updates to the Combined Evidence of Coverage and Disclosure Form to be disseminated by the Group to all Subscribers, which contains all of the updates, which Group may make available to Members or may copy and provide to Members. SHP shall also make the Evidence of Coverage and Disclosure Form available as follows:
- To all Members on the SHP Member Portal
  - In printed form by request to SHP Member Services
  - To all Employers on the SHP Employer Portal
- 4.3 Payment to Providers. SHP will assure that every provider or facility that treats Members will seek reimbursement from SHP and not from a Member or the Group, except for Copayments, Coinsurance or other costs and expenses that are required to be paid by Member directly to provider pursuant to the Combined Evidence of Coverage and Disclosure Form.
- 4.4 Records. The Parties agree that it is necessary for SHP to obtain and review certain information about Members in order to meet its obligations under this Agreement. SHP is under no obligation to tell, nor obtain the consent of, a Member to obtain such information. Group agrees to provide any necessary information to SHP that is needed to pay a claim. Group will keep its own record of all Members, including key facts about their coverage under this Agreement. Group agrees to notify SHP immediately upon any change in any Member's eligibility, including termination of any employee's employment. If Group fails to notify SHP of such a change in eligibility, Group shall be responsible for all benefits provided to any Member on or after the date such Member fails to satisfy the eligibility requirements to be a Member. SHP agrees to retain in confidence any medical information it possesses concerning a Member, but may release such information to its authorized agents and participating providers as necessary to process claims.
- 4.5 Member Appeals and Grievances. The Combined Evidence of Coverage and Disclosure Form includes a complete description of the SHP appeals and grievance procedures and dispute resolution processes for Members.

## Article 5

### RELATIONSHIPS BETWEEN PARTIES; HIPAA

- 5.1 Relationship of Parties. Group is not the agent or representative of SHP and shall not be liable for any acts or omissions of SHP, its agents, employees or providers, or any other person or organization with which SHP has made, or hereafter shall make, arrangements for the performance of services under the Health Plan. Member is not the agent or representative of SHP and shall not be liable for any acts or omissions of SHP, its agents or employees.
- 5.2 Disclosure of PHI. The parties agree that SHP shall not provide to Group any Protected Health Information (PHI), as the term is defined under the federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA"), other than information on whether an individual is participating in, has enrolled in, or has disenrolled from the Health Plan. Group shall identify in Attachment 2 all Trading Partners authorized to receive such information on SHP's behalf and shall assure that all such Trading Partners are contractually obligated to comply with all laws regarding the protection of Member confidentiality and privacy.
- Attachment 2 is incorporated herein by this reference, and may be updated by Group without need to amend this Agreement, provided that Group gives SHP no less than sixty (60) days advance written notice.
- The parties agree that SHP will not provide any other PHI to Group or Group's Trading Partners. The parties agree that SHP shall not provide Group or Group's Trading Partners with Summary Health Information as that term is defined by HIPAA. To the extent that the Group or any of its Trading Partners or other agents request access to PHI in order to assist a Subscriber or a Subscriber's Spouse, Child, or any Dependent, SHP shall only disclose such PHI directly to the Subscriber, who may then make it available to the Group or the Group's Trading Partner or other agent.
- 5.3 Plan Administration Functions. The parties agree that the Group shall have no involvement with Plan Administration Functions as that term is defined by HIPAA.

## Article 6

### CONTRACT PERIOD; RENEWAL PROVISIONS

- 6.1 Contract Period; Renewal. The term of this Agreement shall be one year, unless otherwise agreed upon in writing between SHP and Group or terminated earlier as specified in Article 7. The term of this Agreement shall commence on the Group Coverage Effective Date as set forth on page 1 of this Agreement.
- SHP shall submit an offer of renewal to Group at least one hundred twenty (120) days before the contract renewal date with all proposed rate and benefit modifications. Group must notify SHP if they elect to change their benefit plan options or SHP will auto-renew the group onto the proposed benefit plan options with proposed rates.

## Article 7

### TERMINATION

- 7.1 Termination by Group. Group may terminate this Agreement by giving a minimum of thirty (30) days written notice of termination to SHP. Group termination must always be effective on the first day of the month. Group shall continue to be liable for Health Plan Premiums for all Members enrolled in this Health Plan through Group until the date of termination.
- 7.2 Termination by SHP. SHP may terminate this Agreement only as set forth herein and allowed by federal and state laws and regulations. Any termination set forth in this provision that is deemed to be contrary to law or regulation by SHP or the California Department of Managed Health Care, or any other applicable government agency, shall be considered of no effect during the period that it is so deemed. Termination of this agreement shall result in termination of all Health Plan benefits.
- 7.2.1 For Nonpayment of Health Plan Premiums. SHP may terminate this Agreement if Group fails to pay Health Plan Premiums when due. Nonpayment of Health Plan Premiums includes payments returned due to non-sufficient funds (NSF) and post-dated checks.

If Health Plan Premiums are not paid when due, after the last day of the period for which Health Plan Premiums were paid, SHP shall provide a Notice of Start of Grace Period. The Notice of Start of Grace Period will at a minimum provide the following information:

- The reason for cancellation;
- The effective date of the cancellation;
- The dollar amount due to SHP;
- The date of the last day of paid coverage;



- The date the grace period begins and expires;
- All grace period notification requirements;
- Obligations of the enrollee during the grace period, if any;
- A clear and concise explanation of the right to submit a grievance to the Director; and,
- That all unpaid Health Plan Premiums must be received by SHP within thirty (30) days of the notice date.

If this Agreement is cancelled for nonpayment of Health Plan Premiums, coverage for all Members will be terminated upon expiration of the thirty (30) day grace period. Group understands that it will retain the obligation to pay the Health Plan Premiums applicable to the extension of coverage provided by SHP during the 30 day grace period, and acknowledges SHP's right to recover those amounts from Group after termination of this Agreement.

SHP will continue to provide coverage during the grace period; however Group is responsible to pay all unpaid premiums and any Copayments, Coinsurance or Deductible amounts required under this Agreement.

If a Group, or a party acting on its behalf, makes the necessary Health Plan Premiums payment to SHP and the Health Plan Premiums payment is received by SHP on or before the last day of the grace period, then SHP shall ensure coverage is not cancelled or not non-renewed for nonpayment of premium.

7.2.2 For Providing Misleading or Fraudulent Information. SHP may terminate this Agreement upon sending a written notice to Group and providing a grace period of at least thirty (30) days if Group commits fraud or intentionally misrepresents a material fact to SHP. Additionally, Group agrees that it shall be deemed to have committed fraud or intentional misrepresentation of a material fact if Group has knowledge that a Member has committed fraud or intentionally misrepresented a material fact in the Employee Enrollment/Change Form and Group fails to inform SHP and take good faith action to redress the Member's fraud or intentional misrepresentation.

7.2.3 For Ceasing to Meet Group Eligibility Criteria. SHP may terminate Group upon thirty (30) days written notice to Group if:

- (a) Group fails to maintain Group Contribution requirements; or
- (b) Group fails to meet Group enrollment requirements.

Termination pursuant to Section 7.2.3 shall be effective at the end of the period for which all required premiums have been paid.

7.3 Return of Prepayment Premium/Fees Following Termination. In the event of termination by either SHP (except in the case of fraud or deception in the use of SHP services or facilities, or knowingly permitting such fraud or deception by another) or Group, SHP will, within thirty (30) days, return to Group the pro rata portion of money paid to SHP which corresponds to any unexpired period for which payment has been received, together with amounts due on claims, if any, less any amounts due to SHP.

7.4 Effect of Termination of Agreement. Upon termination, whether by failure to pay premiums or upon written notice, all rights to benefits shall terminate at the end of the period for which all required premiums have been paid and upon the expiration of the applicable grace period. Group agrees to be responsible for notifying its employees that this Agreement has terminated. Upon termination, Group and Members shall be obligated, jointly and severally, to pay to SHP all billed charges for all health services and benefits received by a Member after this Agreement is terminated. Upon default in making payments, SHP shall notify Group and Members of the effective date of termination, and continuation coverage under COBRA or Cal-COBRA will not be available. No termination shall relieve the Group from any obligation incurred prior to the date of termination of this Agreement.

It is the responsibility of the Group to notify the Members of the termination of this Agreement in compliance with all applicable laws and as provided in Section 3.3.1. However, SHP reserves the right to notify Members of termination of this Agreement for any reason, including non-payment of premium. Group shall provide written notice to Members of their rights upon termination of coverage.

Notwithstanding the above, if a Member's employer fails to pay premiums and the Member is terminated, the Member may choose to apply for coverage under an Individual and Family Plan with SHP.

7.5 Termination of Member's Coverage. Coverage under this Agreement will terminate at 11:59 PM Pacific Time on the last day in which a Member ceases to meet the eligibility requirements set forth in the Enrolling in SHP and Adding New Dependents chapter of the Evidence of Coverage. Group and Members shall be obligated, jointly and severally, to pay to SHP all billed charges for all health services and benefits received by a Member or a Dependent after the eligibility ceases, and SHP may withhold from or offset any other amounts owed to Member to recover such amount.

## Article 8

### MISCELLANEOUS PROVISIONS

- 8.1 Governing Law. This Agreement and all transactions contemplated by this Agreement are subject to the laws of the State of California and the United States of America, including the Knox-Keene Health Care Service Plan Act of 1974, as amended, (codified at Chapter 2.2 of Division 2 of the California Health and Safety Code), and the regulations promulgated thereunder by the California Department of Managed Health Care (codified at Chapter 1 of Division 1 of Title 28 of the California Code of Regulations); and, the Employee Retirement Income Security Act of 1974, as amended, (codified at Chapter 18 of Title 29 of the United States Code and the regulations promulgated thereunder by the United States Department of Labor (codified at Chapter XXV of Title 29 of the Code of Federal Regulations). Any provisions required to be in this Agreement by any of the above laws and regulations shall bind SHP, Group and Member whether or not expressly provided in this Agreement.
- 8.2 Use of Name and Logos. Group shall not use the name of SHP or any other affiliated entity of SHP, or any of their trademarks, service marks, logos or trade names for any purpose without the prior written consent of SHP.
- 8.3 Assignment. This Agreement and the rights, interests and benefits hereunder shall not be assigned, transferred, pledged, or hypothecated in any way by either party and shall not be subject to execution, attachment or similar process, nor shall the duties imposed herein be subcontracted or delegated without the approval of the other party. Notwithstanding the above, if SHP assigns, sells or otherwise transfers substantially all of its assets and business to another corporation, firm or person, with or without recourse, this Agreement will continue in full force and effect as if such corporation, firm or person were a party to this Agreement, provided such corporation, firm or person continues to provide prepaid health services.
- 8.4 Validity. The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability and validity of the balance of this Agreement.
- 8.5 Confidentiality. SHP agrees to maintain and preserve the confidentiality of any and all Members in accordance with all applicable state and federal laws. However, Group, by entering into this Agreement and offering coverage to its employees or association members, as applicable, agrees on behalf of its employees to the release of information and access to any and all of Member's medical records for purposes of utilization review, quality review, processing of any claim, financial audit, coordination of benefits, or for any other purpose reasonably related to the provision of benefits under this Agreement to SHP, its agents and employees, Member's participating medical group, and appropriate governmental agencies. SHP shall not release any information to Group which would directly or indirectly indicate to the Group that a Member is receiving or has received Covered Services, unless authorized to do so by the Member.
- 8.6 Amendments. This Agreement may be modified by SHP as set forth in Section 3.6, above, or it may be amended upon the mutual written consent of the parties.
- 8.7 Attachments. The attachments to this Agreement, and all terms and conditions set forth therein, as they are from time-to-time amended are incorporated by reference herein and made an integral part of this Agreement.
- 8.8 Waiver of Default. No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.
- 8.9 Notices. Any notice required or permitted under this Agreement shall be in writing and either delivered personally or by regular, registered, or certified mail, U.S. Postal Service Express Mail, or overnight courier, postage prepaid, at the addresses set forth below:

If to SHP:

Sutter Health Plan  
Attention: Counsel for Sutter Health Plan  
2480 Natomas Park Drive, Suite 150  
Sacramento, California 95833

If to Group:

To the address set forth on page 1 of this Agreement as the Group Physical Address.

Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the notice is addressed and mailed with postage prepaid. Notices delivered by U.S. Postal Service Express mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the notice to the United State Postal Service or courier.

- 8.10 Acceptance of Agreement. Group may accept this Agreement either by execution of this Agreement or by making its initial payment to SHP of Health Plan Premiums on or before the effective date specified on page 1 of this Agreement. Members accept the terms, conditions and provisions of this Agreement upon completion and execution of the Employee Enrollment/Change Form. Acceptance by any of these methods shall render all terms and provisions of this Agreement binding on SHP, Group and Members.
- 8.11 Entire Agreement. This Agreement, including all exhibits, attachments, and amendments, contains the entire understanding and agreement between Group and SHP, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties, whether written or oral, between Group and SHP with respect to the subject matter of this Agreement.
- 8.12 Contracting Provider Group Termination. At least 60 days prior to the termination date of a contract between SHP and a provider group or a general acute care hospital, SHP shall send written notice of the termination by United States mail to Group and to Members who are assigned to the terminating provider group or hospital.
- 8.13 No Third Party Beneficiaries. Except as otherwise expressly indicated in this Agreement, this Agreement shall not create any rights in any third parties who have not entered into this Agreement, nor shall this Agreement entitle any such third party to enforce any rights or obligations that may be possessed by such third party.
- 8.14 Disputes Between SHP and Group. Any and all disputes between SHP and Group shall be determined by submission to binding arbitration before JAMS, a nonjudicial arbitration and mediation service. Any such dispute will not be resolved by a lawsuit or resort to court process, except as California law provides for judicial review of arbitration proceedings. Each party, including any heirs or assigns, to this Agreement is giving up its constitutional right to have any such dispute decided in a court of law before a jury, and instead is accepting the use of binding arbitration.

If the amount at issue is less than \$200,000, then the arbitrator will have no jurisdiction to award more than \$200,000. The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") in effect at the time a demand for arbitration is made will be applied to the arbitration. Either party may initiate arbitration by serving on the other party an arbitration notice setting forth a brief statement of the dispute with a sufficiently detailed statement of the facts and the relief requested to apprise the other party and the arbitrator of the nature of the dispute and relief requested. The parties will seek to mutually agree on the appointment of an arbitrator; however, if an agreement cannot be reached within 30 days following the date demanding arbitration, the parties will use the arbitrator appointment procedures in the Rules. Arbitration hearings will be held at the neutral administrator's offices in Sacramento, California or at another location agreed upon in writing by the parties. Civil discovery may be taken in such arbitration as provided by California law and civil procedure. The arbitrator(s) selected will have the power to control the timing, scope and manner of the taking of discovery and will have the same powers to enforce the parties' respective duties concerning discovery as would a Superior Court of California. This includes, but is not limited to, the imposition of sanctions. The arbitrator(s) will have the power to grant all remedies provided by California law. The arbitrator(s) will prepare in writing an award that includes the legal and factual reasons for the decision. The parties will divide equally the fees and expenses of the arbitrator(s) and the neutral administrator. The arbitrator(s) will not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California law.

**MANDATORY ARBITRATION. Group, Member (including any heirs or assigns) and SHP agree and understand that any and all disputes by and between them, including claims of medical malpractice (that is as to whether any medical services rendered under the Health Plan were unnecessary or unauthorized or were improperly, negligently or incompetently rendered), except for claims subject to ERISA, shall be determined by submission to binding arbitration. Any such dispute will not be resolved by a lawsuit or resort to court process, except as California law provides for judicial review of arbitration proceedings. Each party, including any heirs or assigns, to this Agreement is giving up its constitutional right to have any such dispute decided in a court of law before a jury, and instead is accepting the use of binding arbitration.**

- 8.15 Inability to Arrange Services. In the event that due to circumstances not within the reasonable control of SHP, including but not limited to major disaster, epidemic, complete or partial destruction of facilities, riot, civil insurrection, disability of a significant part of SHP's participating providers or entities with whom SHP has arranged for services under this Agreement, or similar causes, the rendition of medical or hospital benefits or other services provided under this Agreement is delayed or rendered impractical (a "Force Majeure Event"), SHP shall not have any liability or obligation on account of such delay or failure to provide services, except to refund the amount of the unearned prepaid premiums held by SHP on the date such event occurs. Upon the occurrence of a Force Majeure Event, SHP may notify Group and describe in reasonable detail the manner in which such Party's performance of this Agreement has been impaired and the expected length of such impairment. SHP shall use best efforts to resume performance whenever and to whatever extent possible without delay and as medically appropriate refer Members to emergency care.
- 8.16 Group's Agreement to be Bound. This Agreement shall be effective on the Coverage Effective Date, as set forth above, if the Health Plan Premiums have been paid. This Agreement continues as long as the required Health Plan Premiums are paid, unless it is terminated as set forth in Article 7.

IN WITNESS WHEREOF, the parties hereto, being first duly authorized, have set their hands on the dates set forth below.

**Group**

**Sutter Health Plan**



Signature

Shanti Gonzales

Print Name

President, BOE

Title

7/1/2021

Date



Kyla Johnson-Trammell, Secretary, BOE

Approved As To Form



Jun 25, 2021

Joshua R. Daniels  
General Counsel, OUSD

Date

**ATTACHMENT 1  
RATE SHEET**

**ATTACHMENT 2**

**AUTHORIZATION FOR TRADING PARTNER DATA TRANSMISSION**

- A. Group has subcontracted with the Trading Partner(s) listed below in B. to perform certain functions and obligations on behalf of Group. Group affirms that the Trading Partner(s) listed below:
  - 1. Is authorized by Group to transmit or receive information on whether an individual is participating in, has enrolled in, or has disenrolled from the Health Plan; and
  - 2. Is contractually obligated by Group to comply with all state and federal laws regarding the protection of Member confidentiality and privacy.
- B. Authorized Trading Partner(s)
  - 1. ....
  - 2. ....

## ***What changed for employer groups that enrolled with Sutter Health Plus***

Sutter Health Plus made the following changes to the modified Agreement:

- Added a static signature for Sutter Health Plus
  - Updated the Employer Enrollment/Change Form name throughout the contract
  - Removed the signature blocks from the cover page of the Agreement for ease of administration – signature blocks now only appear at the end of the Agreement
  - Made a number of changes to Article 1, Definitions, to be consistent with the definitions in the Sutter Health Plus *EOC* documents
  - Added language in section 1.5 *Combined Evidence of Coverage and Disclosure Form* that provides information on where Groups can access their *Evidence of Coverage and Disclosure Form (EOCs)* and optional benefit documents
  - Revised contract provision 1.9 *Domestic Partner* to ensure that the group's eligibility requirements for domestic partners do not conflict with the California Family Code sections 297 and 299.2 and that group's eligibility requirements are not more restrictive than the Family Code sections
  - Revised contract provision 2.1 *Enrollment Procedure* to add 2.1.2 *Employee Eligibility*
  - Revised contract provision 2.1.3 *Declination of Coverage (Waiver)* to account for eligible employees who previously declined coverage with Sutter Health Plus losing other coverage mid-year and added language to disclose that the eligible employee may be eligible for coverage through the group through a special enrollment period
  - Revised contract provisions 3.2, 3.3, 3.5, 3.6, 3.7, 3.8, and 3.12 to comply with amended DMHC rules 1300.65 and 1300.65.2 for Cancellations, Rescissions and Nonrenewals
  - Revised contract provision 3.7 *Additions and Terminations* to be consistent with the timeline of coverage for newborn members and additions and terminations throughout the month and added language to clarify that, upon request, Sutter Health Plus will accept a newborn's date of birth as the member's effective date
  - Added language to contract provision 3.8 *Retroactive Adjustments* to provide an example of a retroactive adjustment and the timing for adjustments
  - Added language to contract provision 4.1 *Benefits* to include benefit documents on the employer portal
  - Added language to contract provision 4.2 *Material Provided to Employees* to require that in compliance with Health and Safety Code (H&SC) section 1363(f), the group contract holder must disseminate copies of the *EOCs* to its employees and clarify how to request and view copies of the *EOCs*
  - Removed old contract provision 5.2 *Compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996*, since health plans are no longer required to offer certification of prior creditable coverage
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- Added new contract provision 5.2 *Disclosure of PHI* to be consistent with business needs and how Sutter Health Plus works with the group and the group's trading partners and added a statement to ensure that subcontractors comply with all applicable laws
  - Added contract provision 5.3 *Plan Administration Functions* to include that the group will not have involvement with plan administration functions as defined by HIPAA
  - Revised contract provision 6.1 *Contract Period;Renewal* to align renewal dates with Sutter Health Plus business practices and submit large group renewal offers at least 120 days prior to the end of the term in compliance with AB 731 (ch. 807, 2019)
  - Revised contract provision 7.2.1 *Reinstatement* to ensure compliance with H&SC section 1365 and amended DMHC rules 1300.65 and 1300.65.2 which relate to Cancellations, Rescissions and Nonrenewals and give the group longer to notify Sutter Health Plus of member enrollments and terminations
  - Added language to contract provision 7.4 *Effect of Termination of Agreement* to clarify that COBRA and Cal-COBRA are not available for members when their employer group defaults in making payments, but the member will still be eligible to apply for coverage under an Individual and Family Plan with Sutter Health Plus if their employer defaults in making payments
  - Revised contract provision 7.5 *Termination of Member's Coverage* to better align with the titles of the chapters in the EOCs
  - Revised contract provision 8.2 *Use of Name and Logos* to refer to all names, trademarks, service marks, and logos of Sutter Health Plus and other Sutter Health Plus affiliated entities
  - Moved the Mandatory Arbitration language from the front cover of the Contract to contract provision 8.15 *Disputes Between Sutter Health Plus and Group*
  - Deleted Optional Benefits (if elected by employer group) attachment since optional benefit documents are available online
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